

COMMON OMISSIONS IN CHAPTER 11 DISCLOSURE STATEMENTS AND PLANS OF REORGANIZATION

This memo was prepared in an effort to assist the parties in drafting disclosure statements and to streamline the Chapter 11 confirmation process. A majority of the disclosure statements filed are not approved because they lack adequate financial data or they are too long, and many plans are not confirmed because the repayment terms are vague.

A fair disclosure requires a balance between the details in the text and the tabular financial statements. Verbosity, excessive detail, and argument are discouraged. In addition to a neutral recitation of the facts required for the creditors to make an informed decision on the plan, a disclosure statement must contain the following information:

(1) A clear, concise, and conspicuous summary of the plan. The summary must be short and let creditors know what percentage of repayment they can expect. The summary should not simply restate the entire plan.

(2) A one-page tabular liquidation analysis which lists the debtor's assets, the estimated liquidation value of each asset, the source of the estimated value, the encumbrances against the assets, and all remaining liabilities owed by the debtor with the respective priorities of the debts.

Explanations may appear in footnotes to the table. A narrative discussion regarding the value of the assets is not sufficient without a table summarizing the items listed above. This information is required to find that the plan meets the best interest of creditors test found in 11 USC Sec. 1129(a)(7).

(3) Historical and post-confirmation income statements and balance sheets. The income statements should include information for the three years prior to the filing of the disclosure statement and projections for three years after confirmation. The basis of the projections should be included in footnotes or supporting text. Any large variations from historical income and expenses should be explained. This information is necessary to determine whether the plan is feasible in accordance with 11 USC Sec. 1129(a)(11).

(4) A statement, as required by 11 USC Sec. 1129(a)(5), regarding the identity and compensation of future management and any insiders that will be employed by the reorganized debtor-in-possession.

In addition, a confirmable plan must delineate repayment terms which are sufficiently clear to allow the creditors to know when a default has occurred. The creditors must know what they will receive, when they will receive it, and what they can do if they are not paid. This is most easily accomplished by issuing promissory notes to the creditors which include the principal balance, interest rate, payment dates and amounts, and any acceleration or attorney fee provisions. The plan should contain a sample promissory note, and the disclosure statement may have a table listing the creditors with the corresponding balance and payment amounts. Disputes over the exact amount of the debt will be resolved if the debtor objects to a claim.

Finally, it would be greatly appreciated if all references to classes included a name as well as a number. The practice of defining the classes on one page and only referring to the class number thereafter requires the reader to constantly refer back to the definition page. This problem could be easily cured by adopting an abbreviated name for each class.

We hope this information is helpful.

Elizabeth L. Perris, Bankruptcy Judge
Randall L. Dunn, Bankruptcy Judge
Trish M. Brown, Bankruptcy Judge